



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:  
7202.4-OS-2018-00852

January 29, 2019

Via email: [50582-23810667@requests.muckrock.com](mailto:50582-23810667@requests.muckrock.com)

Jesse Coleman  
MuckRock News  
DEPT MR 50582  
411A Highland Avenue  
Somerville, MA 02144

Dear Mr. Coleman:

On March 13 2018, you filed a Freedom of Information Act (FOIA) request seeking the following:

CV or resume and full calendar for Todd Willens, from his start date to the date this request is processed.

On May 23, 2018 we acknowledged your request (OS-2018-00852) and advised you of your fee status under the FOIA.

We are writing today to respond to your request on behalf of the Office of the Secretary.

One of the responsive records you requested is Todd Willens' resume, which is publicly available at the following website:

<https://www.doi.gov/foia/os/other-records>

Please find attached the other responsive record, Todd Willens' calendar. It is 1 file, consisting of 157 pages, which contain redactions as described below.

**Portions of the enclosed documents have been redacted pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552 (b)(5)) under the following privileges:**

**Confidential Commercial Information  
Attorney Client**

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency” 5 U.S.C. § 552 (b)(5). As such, the Exemption 5 “exempt[s] those documents... normally privileged in the civil discovery context.” National Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). The exemption incorporates the privileges that protect materials from discovery in litigation. These privileges include deliberative process, confidential commercial information, attorney work-product, and attorney-client. See id.; see also Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979) (finding a confidential commercial information privilege under Exemption 5).

#### *Confidential Commercial Information Privilege*

When the government enters the marketplace as an ordinary commercial buyer or seller, the government information is protected from competitive disadvantage under Exemption 5. Government Land Bank v. General Services Administration, 671 F.2d 663, 665 (1<sup>st</sup> Cir. 1982). Exemption 5 prevails “where the document contains ‘sensitive information not otherwise available,’ and disclosure would significantly harm the government’s commercial interest.” Id. at 666; see also Merrill, 443 U.S. at 363.

Pursuant to the confidential commercial information privilege, conference call codes and passcodes have been withheld under Exemption 5. This information constitutes “intra-agency” documents because they are only shared with members of the Department of the Interior for the purpose of conducting official government business. Moreover, this information qualifies as “confidential commercial information” because the government entered the marketplace as an ordinary commercial buyer.

In line with Land Bank and Merrill, the information is “sensitive and not otherwise available.” If the information was released, the government’s financial interest would be significantly harmed. The conference calls would no longer be private since unknown, non-governmental parties would have the ability to listen in to the calls. The funds spent on purchasing the information would therefore be wasted, and the information would be of no use.

Because we reasonably foresee that the release of this information would significantly harm the government’s financial interest by publicizing sensitive information, the Office of the Secretary is withholding it in accordance with Exemption 5 of the FOIA.

#### *Attorney-Client Privilege*

The attorney-client privilege protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice” and is not limited to the context of litigation. Mead Data Cent., Inc. v. United States Dep’t of the Air Force, 566 F.2d 242, 252-53 (D.C. Cir. 1977). Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information. See Elec. Privacy Info. Ctr. v. United States Dep’t of Homeland Sec., 384 F. Supp. 2d 100, 114-15 (D.D.C. 2005).

We reasonably foresee that disclosure would harm an interest protected by exemption 5. The portions of these documents that have been withheld pursuant to the attorney-client privilege of Exemption 5 constitute confidential communications between agency attorneys and agency clients, related to legal matters for which the client sought professional legal assistance and services. Public dissemination of them would most certainly have a chilling effect on communications between agency clients and attorneys.

**Portions of the enclosed documents have been redacted pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)) because they fit certain categories of information:**

**[Email addresses  
Home and personal cell phone numbers]**

Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The courts have held that the phrase “similar files” involves all information that applies to a particular person. Hertzberg v. Veneman, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003).

To determine whether releasing requested information would constitute a clearly unwarranted invasion of personal privacy, we are required to perform a “balancing test.” This means that we must weigh the individual’s right to privacy against the public’s right to disclosure.

- (1) First, we must determine whether the individual has a discernable privacy interest in the information that has been requested.
- (2) Next, we must determine whether release of this information would serve “the public interest generally” (i.e., would “shed light on the performance of the agency’s statutory duties”).
- (3) Finally, we must determine whether the public interest in disclosure is greater than the privacy interest of the individual in withholding.

The information that we are withholding consists of personal information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in it. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency’s statutory duties and that, on balance, the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. Nat’l Ass’n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989).

In summation, we have determined that release of the information that we have withheld would constitute a clearly unwarranted invasion of the privacy of these individuals, and that it therefore may be withheld, pursuant to Exemption 6.

**Portions of the enclosed documents have been redacted pursuant to Exemption 7 of the FOIA (5 U.S.C. § 552(b)(7)).**

Exemption 7 of the FOIA protects from disclosure “records or information compiled for law enforcement purposes” if such records fall within one or more of six additional categories. The records withheld under Exemption 7 were compiled for law enforcement purposes and therefore meet the threshold requirement of Exemption 7.

Exemption 7(C) protects personal information in law enforcement records where release could reasonably be expected to constitute an unwarranted invasion of personal privacy. Here, releasing records you are seeking would constitute an unwarranted invasion of privacy because they identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency’s performance of its statutory duties. Therefore, we are withholding records under Exemption 7(C).

Jennifer Heindl, Attorney-Advisor, in the Office of the Solicitor, was consulted in reaching this decision. Clarice Julka, Office of the Secretary FOIA Officer, is responsible for making this decision.

## Appeals

You may appeal this decision to the Department’s FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 PM Eastern Time, Monday through Friday, will be deemed received on the next workday. **Your appeal must be made in writing** and addressed to:

Attn: FOIA/Privacy Act Appeals Officer  
U.S. Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS6556 MIB  
Washington, D.C. 20240

Fax: 202-208-6677

E-mail: [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov)

You must include with your appeal copies of all correspondence between you and the Office of the Secretary concerning your FOIA request, including a copy of your original FOIA request and the response letter. You must also include, in as much detail as possible, an explanation of why you believe the Office of the Secretary’s response was in error. Failure to include this documentation with your appeal will result in the Department’s rejection of your appeal, unless the FOIA/Privacy Act Officer determines (in her sole discretion) that good cause exists to accept the defective appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words “FREEDOM OF INFORMATION APPEAL.” The appeal should include your name, mailing address, daytime telephone number (or the name and

telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification. For more information on FOIA administrative appeals, including how the Department will respond to your appeal, please refer to Subpart H of the Department's FOIA regulations, 43 C.F.R. § 2.57-§ 2.64.

## **Fees**

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. (see 43 C.F.R. § 2.37(g)). Therefore, there is no billable fee for the processing of this request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

The National Archives and Records Administration  
Office of Government Information Services  
8601 Adelphi Road- OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

You may also seek dispute resolution services from our FOIA Public liaison, Clarice Julka, by email at [os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov), or by phone at 202-513-0765.

If you have any questions about our response to your request, you may contact Emily Karp by phone at 202-513-0765, by fax at 202-219-2374, by email at [os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov), or by mail at U.S. Department of the Interior, 1849 C Street, NW, MS-7328, Washington, D.C. 20240.

Sincerely,

Clarice Julka  
Office of the Secretary  
FOIA Officer